

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DIDLAKE, INC.,)	
)	
Respondent,)	
)	
and)	Case No. 05-RC-179494
)	
PUBLIC SERVICE EMPLOYEES)	
LOCAL UNION 572,)	
)	
Petitioner.)	

REPLY TO UNION’S OPPOSITION TO DIDLAKE’S MOTION TO STAY

The Respondent, Didlake, Inc. (“Didlake”), submits this Reply to the Opposition filed by the Public Service Employees Local Union 572 (the “Union”) on June 26, 2017, to Didlake’s Motion for Stay of Certification of Representative (the “Motion”) filed on June 13, 2017.

I. The Union’s opposition rests on a strawman mischaracterization of the nature of Didlake’s request, runs contrary to Board precedent, and appeals to inapposite case law.

The sole basis of the Union’s opposition to Didlake’s motion to stay is the erroneous argument that the Certification of Representative (the “Certification”) has already been issued and therefore cannot be stayed. The Union’s argument erroneously presumes that Didlake is requesting the Board to stay the *issuance* of the Certification rather than the *effect* of the Certification. Clearly, Didlake, being fully aware that the Certification has already been issued, is requesting that the effect of the Certification be stayed. The effect of the Certification is not a “moot” matter. In fact, Didlake is specifically requesting in its request for review that the Certification be overturned.

The Union’s position not only is unreasonable but also runs contrary to Board precedent. The Union utterly fails to address *Maremont Corp.*, 239 NLRB 240 (1978), which was cited by

Didlake in the Motion. In *Maremont*, the Board stayed a certification of representative pending a request for review.

The Union's appeal to non-controlling case law in support of its position also fails. The cases it relies upon are inapposite. *See Harris v. City of Houston*, 151 F.3d 186, 189 (5th Cir. 1998) (refusing to enjoin annexation of neighborhood by city that took place more than one year prior because harms had already occurred); *Zen Music Festivals v. Stewart*, 72 F. App'x 168, 169 (5th Cir. 2003) (refusing to enjoin music concert that already occurred); *Barnhill v. Pregent*, No. CIV. A. 96-1601, 1997 WL 5915, at *1 (E.D. La. Jan. 6, 1997) (remand order to state court when state court had already taken action upon order); *City of New Orleans v. Nat'l Serv. Cleaning Corp.*, No. CIV. A. 96-1601, 1997 WL 5915, at *1 (E.D. La. Jan. 6, 1997) (remand order to state court). The Union has alleged no irreversible actions like those in the case law it cites. For example, if the Union claimed that Didlake had already signed and implemented a collective bargaining agreement with the Union, the Union's cited case law may have found better footing, but the Union has made no such claims.

Instead of the highly distinguishable case law cited by the Union, the better corollary to the case at hand is the wide universe of legal authority allowing a party to stay a ruling when it is being appealed. *See, e.g., Fed. R. Civ. P. 62(b)(c)* (providing for stay of enforcement of judgment, including injunctions, on appeal); *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970) (identifying factors in deciding whether to stay an injunction). The law, most sensibly, generally provides mechanisms by which parties can obtain stays of judgments or injunctions that they are directly appealing. *See, e.g., Bragg v. Robertson*, 190 F.R.D. 194, 195 (S.D. W. Va. 1999) (granting stay of permanent injunction pending appeal). Didlake is requesting review of the Certification and therefore should have the ability to request that it be stayed.

II. The Union fails to address the merits of the Motion as to *why* the Certification should be stayed.

The Union's entire Opposition is based on the erroneous argument that the Certification cannot be stayed. In doing so, the Opposition does nothing to contradict Didlake's contention as that a stay, in fact, is appropriate, such as the harms to Didlake and unit members that will result if a stay is not entered and the numerous and significant errors in the Regional Director's decisions and directions of election.

III. Conclusion.

For the foregoing reasons, Didlake hereby requests that the Motion be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 28, 2017, a copy of the foregoing was sent via electronic mail to:

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